



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220110-0006]

RIN 0648-BL00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery of the Atlantic; Amendment 10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 10 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery of the Atlantic (Dolphin and Wahoo FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would revise the annual catch limits (ACLs), accountability measures (AMs), and additional management measures for dolphin and wahoo. The additional management measures would address commercial trip limits, authorized fishing gear, the operator permit (card) requirement for dolphin and wahoo, and the recreational vessel limit for dolphin. Amendment 10 would also revise the acceptable biological catch (ABC) and sector allocations for both dolphin and wahoo. The purpose of this proposed rule and Amendment 10

is to base conservation and management measures for dolphin and wahoo on the best scientific information available and increase net benefits to the fishery.

DATES: Written comments must be received on or before
**[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2021-0093," by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2021-0093", in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information

submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Written comments on the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Adam Bailey, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701 and to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

Electronic copies of Amendment 10, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-10-changes-catch-levels-sector-allocations-accountability-measures-and-management>.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or email: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery in Federal waters from Maine south to the Florida Keys in the Atlantic is managed under the Dolphin and Wahoo FMP. The Dolphin and Wahoo FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under

the authority of the Magnuson-Stevens Act.

Background

The current total ACLs for both dolphin and wahoo were implemented in 2014 by Amendment 5 to the Dolphin and Wahoo FMP (Amendment 5), and are based on the Council's Scientific and Statistical Committee's (SSC) ABC recommendations using the third highest landings value during 1999-2008 (79 FR 32878; June 9, 2014). The landings data during that time period did not include recreational landings from Monroe County, Florida, and were based on recreational data from the Marine Recreational Information Program's (MRIP) Coastal Household Telephone Survey (CHTS) method. In April 2020, the Council's SSC recommended new ABC levels for dolphin and wahoo using the third highest annual commercial and recreational landings value during 1994-2007. These landings include recreational landings from Monroe County, Florida, and used MRIP's Fishing Effort Survey (FES) method, which is considered more reliable and robust compared to the CHTS survey method. The new ABC recommendations for dolphin and wahoo are also based on the new weight estimation procedure from NMFS Southeast Fisheries Science Center (SEFSC) that uses a 15 fish minimum sample size and represents the best scientific information available. This proposed rule would revise the total ACLs for dolphin and wahoo to equal the new ABC values.

The current sector allocations for dolphin were implemented in 2016 by Amendment 8 to the Dolphin and Wahoo FMP (Amendment 8), with 10.00 percent of the total ACL to the commercial sector and 90.00 percent of the total ACL to the recreational sector (81 FR 3731; January 22, 2016). In 2015, the commercial sector was closed because the commercial ACL was met during that fishing year. In Amendment 8, the Council set the commercial allocation at the average of the percentages of the total commercial catch for 2008-2012, and the resulting 10 percent of the total ACL for the commercial allocation was expected to prevent subsequent closures of the commercial sector. The current sector allocations for wahoo were implemented in 2014 by Amendment 5, with 3.93 percent of the total ACL to the commercial sector and 96.07 percent of the total ACL to the recreational sector. The Council decided on these wahoo allocations by balancing long-term catch history with recent catch history, and determined this method as the most fair and equitable way to allocate fishery resources since it considered past and present participation. The current allocations for both dolphin and wahoo were applied to the respective species' total ACLs (equal to the ABCs) to obtain the sector ACLs.

Amendment 10 would specify commercial and recreational allocations for dolphin at 7.00 percent and 93.00 percent, respectively. For wahoo, Amendment 10 would specify

commercial and recreational allocations at 2.45 percent and 97.55 percent, respectively. These proposed allocations would be applied to the respective species' proposed total ACLs (equal to the proposed ABCs) using the third highest landings value during 1994-2007 to determine the proposed sector ACLs. The proposed sector ACLs for dolphin and wahoo were derived from landings which include recreational landings from Monroe County, Florida, use MRIP's FES method, and SEFSC'S new weight estimation procedure. For dolphin, the Council has determined that the proposed allocations and revised sector ACLs would avoid a decrease in the current pounds of dolphin available to either sector's ACL. For wahoo, the Council's intent is to maintain the current commercial ACL and allocate the remaining revised ACL to the recreational sector.

Amendment 10 and this proposed rule do not propose any changes to the commercial AMs for dolphin or wahoo. The current recreational AMs for dolphin and wahoo were implemented in 2014 by Amendment 5, and do not contain an in-season AM but instead require a monitoring for persistence in recreational landings during the year following any recreational ACL overage. Further, the current recreational post-season AMs state that if the combined commercial and recreational landings exceed the combined commercial and recreational ACLs, and dolphin and wahoo are overfished, the recreational ACL for the

following year will be reduced by the amount of the recreational overage in the prior fishing year, and the recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the reduced ACL. The Regional Administrator (RA) will determine, using the best scientific information available, if a reduction in the recreational ACL and a reduction in the length of the following fishing season is unnecessary. These recreational post-season AMs for dolphin and wahoo are not viable because the post-season AMs would not be triggered as there is not a peer-reviewed stock assessment for dolphin and wahoo, and such assessment is unlikely to be conducted in the near future. Therefore, there is no likely method to determine their stock status. This proposed rule would establish a trigger to implement post-season AMs and once triggered, specify the post-season AMs for dolphin and wahoo that would not be based on their stock status.

In 2017, Regulatory Amendment 1 to the Dolphin and Wahoo FMP and associated final rule implemented the current commercial trip limit for dolphin of 4,000 lb (1,814 kg), round weight, once 75 percent of the commercial ACL is reached (82 FR 8820; January 31, 2017). Prior to reaching 75 percent of the commercial ACL, there is no commercial trip limit for dolphin. In 2004, the final rule for the original Dolphin and Wahoo FMP implemented the current

commercial trip limit for wahoo of 500 lb (227 kg); and a commercial trip limit of 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N latitude, for a vessel that does not have a Federal commercial vessel permit for dolphin and wahoo but has a Federal commercial vessel permit in any other fishery.

In 2004, the final rule for the original Dolphin and Wahoo FMP also implemented the currently authorized commercial gear types in the dolphin and wahoo fishery in the Atlantic Exclusive Economic Zone (EEZ) as automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types (including trap, pot, or buoy gear) other than authorized gear types may not possess dolphin or wahoo. In 2016, the Atlantic Offshore Lobstermen's Association initially requested that the Council modify the fishing gear regulations to allow the lobster fishery's historical practice of harvesting dolphin by rod and reel while in the possession of lobster pots to continue. This proposed rule would allow a vessel in the Atlantic EEZ that possesses both a Federal Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) required to fish using trap, pot, or buoy gear; or is in compliance with permit requirements specified for the spiny lobster

fishery in 50 CFR 622.400 to retain dolphin and wahoo caught by rod and reel while in possession of such gear types.

In 2004, the original Dolphin and Wahoo FMP and associated final rule implemented the requirement for a vessel operator or a crew member to hold a valid operator permit (also called an operator card) for the Atlantic dolphin and wahoo commercial permit or a charter vessel/headboat permit for Atlantic dolphin and wahoo to be valid. The operator permit requirement was implemented to improve enforcement within the fishery, aid in data collection, and decrease costs to vessel owners from fishery violations by vessel operators. However, in actuality, the benefits of operator permits to improve enforcement have not occurred as they have not been widely used as an enforcement tool since implementation. Rather, other methods of fishery enforcement, such as vessel permits and landings, have been used by law enforcement within the fishery. Because the expected benefits from operator permits are not being realized, this proposed rule would remove the requirement for operator permits in the dolphin and wahoo fishery.

The current dolphin recreational bag limit of 10 fish per person, not to exceed 60 fish per vessel in the Atlantic EEZ, was implemented by the original Dolphin and Wahoo FMP in 2004. Since then, interest in recreational

harvest of dolphin has increased and Council public testimony, especially from Florida and its constituents, has recommended a decrease in the recreational retention limits to further control recreational harvest. This proposed rule would decrease the dolphin recreational vessel limit for charter vessels and private recreational vessels, excluding headboats. The dolphin individual recreational bag limit of 10 fish per person in the Atlantic EEZ remains unchanged.

Management Measures Contained in this Proposed Rule

ACLs

Dolphin

The current total ACL for dolphin is 15,344,846 lb (6,960,305 kg), round weight. This proposed rule would revise the total ACL for dolphin to 24,570,764 lb (11,145,111 kg), round weight, based on the ABC recommended by the Council's SSC. The revised total ACL is equal to the ABC as described in Amendment 10 and is based upon best scientific information available. As a species, dolphin are highly fecund, spawn throughout a wide geographical range, have an early age at first maturity, and a short generation time and so therefore, dolphin's life-history could support the increase in the total ACL. The Report to Congress on the Status of U.S. Stocks indicates dolphin is not overfished, and is not undergoing overfishing.

Additionally, the Council noted that based on the last 20

years of total landings data for dolphin, it appears unlikely that harvest would consistently exceed the proposed total ACL. Commercial landings are well tracked through electronic dealer reporting requirements, there is a commercial trip limit in place, and recreational landings for dolphin exhibit relatively low percent standard errors (PSE). The Council also noted that setting the ACL equal to the ABC may allow the dolphin portion of the dolphin and wahoo fishery to take advantage of years of exceptionally high abundance of dolphin.

The current commercial and recreational ACLs for dolphin are 1,534,485 lb (696,031 kg), round weight, and 13,810,361 lb (6,264,274 kg), round weight, respectively. These are based on the current commercial and recreational allocations of 10.00 percent and 90.00 percent, respectively. The proposed commercial and recreational ACLs for dolphin are 1,719,953 lb (780,158 kg), round weight, and 22,850,811 lb (10,364,954 kg), round weight, respectively. The proposed dolphin sector ACLs are based on the commercial and recreational allocations of 7.00 percent and 93.00 percent, respectively.

Wahoo

The current total ACL for wahoo is 1,794,960 lb (814,180 kg), round weight. The proposed rule would revise the total ACL for wahoo to 2,885,303 lb (1,308,751 kg), round weight based upon the ABC recommended by the

Council's SSC. The revised total ACL is equal to the ABC and is based upon best scientific information available. Wahoo also exhibit rapid growth rates, are highly migratory, and are sexually mature at an early age and so their life history also supports an increase in the ACL. The overfishing and overfished status of wahoo is unknown. However, recent studies found that wahoo did not show a negative decline in relative abundance in recent years. The Council noted that commercial landings for wahoo are also well tracked through electronic dealer reporting requirements, there is a commercial trip limit of 500 lb (227 kg), and that recreational landings for wahoo exhibit relatively low PSEs. The Council also noted that setting the ACL equal to the ABC will allow the wahoo portion of the dolphin and wahoo fishery to take advantage of years when there is exceptionally high abundance of wahoo.

The current commercial and recreational ACLs for wahoo are 70,542 lb (31,997 kg), round weight, and 1,724,418 lb (782,183 kg), round weight, respectively. These are based on the current commercial and recreational allocations of 3.93 percent and 96.07 percent, respectively. The proposed commercial and recreational ACLs for wahoo are 70,690 lb (32,064 kg), round weight, and 2,814,613 lb (1,276,687 kg), round weight, respectively. The proposed sector ACLs are based on the commercial and recreational allocations of 2.45 percent and 97.55 percent, respectively.

No biological effects are expected to the dolphin and wahoo stocks from these allocation changes because the proposed sector ACLs would not change the proposed total ACLs for dolphin and wahoo. The commercial sector for dolphin and wahoo has effective in-season AM already in place to help constrain commercial harvest, and this proposed rule considers modifications to the post-season AMs to both stocks to reduce the risk of the recreational ACL from being exceeded. In deciding on new sector allocations, the Council wanted to recognize the needs of the recreational sector for dolphin and wahoo which would exhibit higher landings than previously estimated with the new accounting of recreational landings using MRIP's FES method. At the same time the Council did not want to reduce the commercial ACLs on a pound basis for dolphin and wahoo and noted that the proposed allocations and sector ACLs would strike a balance between the needs of both sectors.

AMs

Dolphin

This proposed rule would revise the recreational AMs for dolphin. The current in-season closure and stock status based post-season AM would be replaced. The proposed recreational AM would be a post-season AM that would be triggered in the following fishing year if the total ACL (commercial and recreational ACLs, combined) is exceeded. The Council's intent is to avoid closing recreational

harvest in-season and extend maximum fishing opportunities to the recreational sector without triggering the recreational AM, as long as the commercial sector is under harvesting its sector ACL. The revised recreational AM trigger would also help ensure sustainable harvest by preventing the total ACL from being exceeded on a consistent basis. Once triggered, the proposed post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season would not be reduced if the Regional Administrator (RA) determines, using the best available science, that the season reduction is not necessary. The Council noted that there would be a relatively low likelihood of the recreational AM for dolphin being triggered, because the proposed recreational ACL is based on the proposed ABC, which is set at a relatively high level of landings that is not often observed in the dolphin portion of the dolphin and wahoo fishery. Additionally, any determination that the total ACL had been exceeded would allow for the monitoring of landings during the following season to evaluate whether the elevated landings from the previous fishing year are continuing to persist. That information would inform decisions on whether a fishing season closure would actually need to occur to constrain harvest to the ACL.

Wahoo

This proposed rule would revise the recreational AMs for wahoo. The current in-season closure and stock status based post-season AM would be replaced. The proposed recreational AM would be a post-season AM that would be triggered in the following fishing year if the recreational ACLs are constant and the 3-year geometric mean of landings exceeds the recreational ACL. As described in Amendment 10, whenever the recreational ACL is changed, a single year of landings would be used an overage determination, beginning with the most recent available year of landings, then a 2-year average of landings from that single year and the subsequent year, then a 3-year average of landings from those 2 years and the subsequent year, and thereafter a progressive running 3-year average would be used to determine if the recreational AM trigger has been met. The Council noted this approach would allow the recreational AM to be triggered if the ACL was exceeded on a consistent basis. A 3-year geometric mean would help to smooth the data and potentially avoid implementing restrictive recreational post-season AMs unnecessarily if there was an anomaly in the recreational landings estimates during those 3 years that was not accurately reflecting an actual increase in the harvest of wahoo. It was also noted by the Council that a geometric mean is less sensitive to being affected by abnormally large variations in landings

estimates than using the arithmetic mean or using a single year point estimate. Once triggered, the post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in that year. However, the length of the recreational season would not be reduced if the RA determines, using the best available science, that a fishing season reduction is not necessary. Additionally, any determination that the ACL had been exceeded would allow for the monitoring of landings for the following season to evaluate whether the elevated landings from the previous year are continuing to persist. That information would inform decisions on whether a late season harvest closure would actually need to occur. The Council also noted the relatively equitable nature and equally distributed effects of a shortening of the recreational season, as wahoo are often targeted and caught late in the year in many areas of the Atlantic region.

Commercial Trip Limits and Authorized Gear Exemption

For vessels with a commercial permit for Atlantic dolphin and wahoo, under the current trip limits, dolphin and wahoo may only be harvested and possessed with the authorized gear types onboard. These gear types are automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear. Possession on the vessel of any other gear type results in a prohibition of

the possession of any dolphin or wahoo.

American lobster fishers requested to the Council that they be allowed to possess dolphin or wahoo while they moved from one lobster pot to the next. The Council wanted to allow for the authorized gear exemption based on a request from the Atlantic Offshore Lobstermen's Association to allow the historical practice of harvesting dolphin with rod and reel while in the possession of lobster pots to continue and also take a broader approach to allow vessels fishing with trap, pot, or buoy gear to possess dolphin or wahoo as long as the fish were harvested with rod and reel gear. The Council decided to be more comprehensive and included other trap, pot, and buoy gear. This proposed rule would allow for a new category of commercial trip limits for dolphin and wahoo based on a proposed authorized gear exemption for trap, pot, and buoy gear. This proposed rule would allow the harvest and retention of 500 lb (227 kg), gutted weight, of dolphin and 500 lb (227 kg) of wahoo, on board a vessel in the Atlantic EEZ that possesses both an Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) required that allow a vessel to fish using trap, pot, or buoy gear or is in compliance with the permitting requirements for the spiny lobster of the Gulf of Mexico and South Atlantic as described at 50 CFR 622.400, caught by rod and reel while in possession of such gear types. The proposed commercial trip limits under

the authorized gear exemption may not be combined with the current commercial trip limits for commercially permitted dolphin and wahoo vessels. The Council determined that this additional regulatory flexibility would have positive economic effects within the fishery while also limiting the potential for any unforeseen significant increases in commercial landings through the specific setting of the 500 lb (227 kg), gutted weight, trip limit.

Operator Permits

Currently, an operator of a vessel with either a commercial permit or a charter vessel/headboat permit for dolphin and wahoo is required to have an operator permit. Such operator permit must be onboard the vessel and the vessel owner is required to have a permitted operator onboard the vessel while it is at sea or offloading. This operator permit requirement was implemented in 2004, through the original FMP for dolphin and wahoo, as a way to assist in law enforcement efforts within the fishery by holding the vessel operator accountable for any violation of regulations and to aid in data collection (69 FR 30235; May 27, 2004).

This proposed rule would remove the current requirements for operator permits and permitted operators for both the dolphin and wahoo commercial and charter vessel/headboat permitted vessels. At the March 2016 Council meeting, the NMFS Office of Law Enforcement (OLE) gave a presentation on

operator permits, and stated that the operator permits are not used to a large extent by OLE or their law enforcement partners for gathering data, distributing information, or enforcement. The Council noted that there is some potential value for operator permits in aiding law enforcement efforts, but the inconsistent requirements between Atlantic fisheries greatly diminishes this utility. Public testimony indicated that operator permits are rarely checked by enforcement personnel during fishing trips and are burdensome for fishermen to renew and maintain. The Council determined that the limited use of operator permits in the dolphin and wahoo fishery did not outweigh the cost to fishermen to obtain the permit, and removing this requirement would yield positive social, economic, and administrative benefits.

Recreational bag and vessel limits for dolphin

For Atlantic dolphin, the current bag and possession limits are 10 fish per person, not to exceed 60 fish per vessel, whichever is less, except onboard a headboat where the limit is 10 per paying passenger. This proposed rule would decrease the recreational dolphin vessel limit from 60 fish per vessel to 54 fish for charter vessels and private recreational vessels, excluding headboats, in the Atlantic EEZ. The recreational bag limit for private recreational anglers and passengers onboard charter vessels and headboats will remain at 10 fish per person in the

Atlantic EEZ. As a result of the proposed possession limit reduction, the total estimated annual reduction in recreational landings is expected to be 114,051 lb (51,733 kg), round weight. Data analysis in Amendment 10 demonstrated that most of the recreational trips in the Atlantic EEZ targeting dolphin harvested less than 10 fish per vessel. Therefore, as a result of the very small proportion of recreational trips that might reach the proposed vessel limit of 54 fish per vessel, no change in fishing activity or behavior is anticipated. The Council noted that one of the goals of the Dolphin and Wahoo FMP is to maintain a precautionary approach to management. While there is no Southeast Data and Assessment Review stock assessment for dolphin and the stock is listed as not overfished or undergoing overfishing, the Council heard public testimony, particularly from anglers in Florida, that dolphin abundance appears to be low and there was concern over the health of the dolphin stock and the associated fishery. The Council determined a coast-wide reduction in the vessel limit was appropriate to maintain consistency of regulations across the region in the retention limits for dolphin and noted that such a change in retention limits would lead to more substantial harvest reductions than a Florida-specific or regional approach.

Management Measures in Amendment 10 Not Contained in this Proposed Rule

ABC

The current ABC for dolphin and wahoo was implemented in 2014 by Amendment 5, and are based on the Council's SSC's recommendations using the third highest landings value during 1999-2008. These landings did not include recreational landings from Monroe County, Florida, and were based on recreational data from the MRIP CHTS method. In April 2020, the Council's SSC recommended new ABC levels for dolphin and wahoo using the third highest landings value during 1994-2007. These landings include recreational landings from Monroe County, Florida, and used MRIP's FES method, which is considered more reliable by the Council's SSC, the Council, and NMFS, and more robust compared to the CHTS survey method. The new ABC recommendations within Amendment 10 for dolphin and wahoo are also based on the new weight estimation procedure from NMFS SEFSC that uses a 15 fish minimum sample size and represents the best scientific information available.

Sector Allocations

As discussed, Amendment 10 would revise the commercial and recreational allocations for both dolphin and wahoo. For dolphin, the current commercial and recreational allocations are 10.00 percent and 90.00 percent, respectively. The new dolphin sector allocations would result in commercial and recreational allocations of 7.00 percent and 93.00 percent, respectively. For wahoo, the

current commercial and recreational allocations are 3.93 percent and 96.07 percent, respectively. The new wahoo sector allocations would result in commercial and recreational allocations of 2.45 percent and 97.55 percent, respectively.

As discussed, in deciding on new sector allocations, the Council wanted to recognize the needs of the recreational sector for both dolphin and wahoo which would exhibit higher landings than previously estimated with the new accounting of recreational landings using MRIP's FES method. At the same time the Council did not want to reduce the commercial ACLs on a pound basis for dolphin and wahoo and noted that the proposed allocations and sector ACLs would strike a balance between the needs of both sectors.

Goals and Objectives

The goals and objectives of the Dolphin and Wahoo FMP were implemented through the original fishery management plan in 2004 and have not been revised since then. In 2016, the Fisheries Allocation Review Policy (NMFS Policy Directive 01-119) encouraged the use of adaptive management with respect to allocation revisions, and recommended periodic re-evaluation and updating of the management goals and objectives of any FMP to ensure they are relevant to current conditions and needs. Amendment 10 would revise these Dolphin and Wahoo FMP goals and objectives in response to the 2016 Fisheries Allocation Review Policy and

ensure the goals and objectives reflect the current dolphin and wahoo fishery. Specifically, the revised goals and objectives seek to manage the dolphin and wahoo fishery using a precautionary approach that maintains access, minimizes competition, preserves the social and economic importance of the fishery, as well as promotes research and incorporation of ecosystem considerations where practicable.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 10, the Dolphin and Wahoo FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble. The objectives of this proposed rule are to base conservation and management

measures on the best scientific information available and increase net benefits to the Nation, consistent with the Magnuson-Stevens Act and its National Standards.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows. All monetary estimates in the following analysis are in 2019 dollars.

This proposed rule, if implemented, would set the total ACL for dolphin equal to the new ABC for dolphin that was recommended by the Council's SSC. The new total ACL would be equal to 24,570,764 lb (11,145,102 kg), round weight, where the recreational component of the total ACL is based on MRIP-FES data. The current total ACL is 15,344,846 lb (6,960,299 kg), round weight, where the recreational component of the total ACL is based on MRIP-CHTS data. Amendment 10 would increase the recreational allocation of the total ACL for dolphin from 90 percent to 93 percent and decrease the commercial allocation of the total ACL for dolphin from 10 percent to 7 percent.

This proposed rule would set the total ACL for wahoo equal to the new ABC for wahoo that was recommended by the Council's SSC. The new total ACL would be equal to

2,885,303 lb (1,308,750 kg), round weight, where the recreational component of the total ACL is based on MRIP-FES data. The current total ACL is 1,794,960 lb (814,179 kg), round weight, where the recreational component of the total ACL is based on MRIP-CHTS data. Amendment 10 would also increase the recreational allocation of the total ACL for wahoo from 96.07 percent to 97.55 percent and decrease the commercial allocation of the total ACL for wahoo from 3.93 percent to 2.45 percent.

This proposed rule would also revise the trigger for the post-season recreational AM for dolphin and revise the post-season recreational AM for dolphin. Currently, if recreational landings exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for persistence in increased landings. If the recreational ACL is exceeded, it will be reduced by the amount of the recreational ACL overage in the following fishing year and the recreational season will be reduced by the amount necessary to ensure that recreational landings do not exceed the reduced ACL, only if the species is overfished and the total ACL is exceeded. Under the proposed rule, post season AMs would be implemented in the following fishing year for the recreational sector if the total ACL is exceeded, and the length of the following recreational fishing season would be reduced by the amount necessary to prevent the recreational ACL from being

exceeded in the following year. However, the length of the recreational season would not be reduced if the RA determines it is not necessary using the best available science.

This proposed rule would also revise the trigger for the post-season recreational AM for wahoo and revise the post-season recreational AM for wahoo. Currently, if recreational landings exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for persistence in increased landings. If the recreational ACL is exceeded, it will be reduced by the amount of the recreational ACL overage in the following fishing year and the recreational season will be reduced by the amount necessary to ensure that recreational landings do not exceed the reduced ACL only if wahoo is overfished and the total ACL is exceeded. Under the proposed rule, if the recreational ACL is constant, post season AMs would be implemented in the following fishing year if the 3-year geometric mean of landings exceeds the recreational ACL and the length of the following recreational fishing season would be reduced by the amount necessary to prevent the recreational ACL from being exceeded in the following year. If the recreational ACL is changed, then the most recent 1-year or 2-year average of landings would be used as the trigger in place of the 3-year geometric mean. However, the length of the recreational season would not be reduced if

the RA determines it is not necessary using the best available science.

This proposed rule would also allow a vessel that possesses a valid Atlantic dolphin and wahoo commercial vessel permit, and either possesses a valid Federal commercial permit to fish trap, pot, or buoy gear or is in compliance with the Federal regulations for spiny lobster permits, to retain up to 500 lb (228 kg), gutted weight, of dolphin and 500 lb (228 kg) of wahoo using rod and reel gear with trap, pot, or buoy gear on board. Currently, vessels with trap, pot, or buoy gear on board are not allowed to retain dolphin or wahoo.

This proposed rule would also remove the requirement for a vessel captain or crewmember to possess an operator permit (also known as an "operator card") in order for a vessel's Atlantic dolphin and wahoo commercial permit or Atlantic dolphin and wahoo charter vessel/headboat permit to be valid. Lastly, this proposed rule would also reduce the recreational vessel limit for dolphin from 60 fish to 54 fish per trip for private recreational and charter vessels.

From 2015 through 2019, the average number of vessels that commercially harvested dolphin or wahoo using any type of gear was 721 per year. Many vessels commercially harvest both dolphin and wahoo and some vessels use longline gear as well as other gear to harvest dolphin or wahoo on trips

throughout a given year. The direct effects on commercial vessels from the actions to change the total ACLs and sector allocations are expected to vary depending on whether they harvest dolphin or wahoo as well as whether they use longline gear or other gear to harvest dolphin or wahoo. From 2015 through 2019, the average number of vessels commercially harvesting Atlantic dolphin per year was 677. Of these 677 vessels, an average of 85 vessels used longline gear while an average of 592 vessels used other gear to commercially harvest Atlantic dolphin per year. During this time, the average number of vessels commercially harvesting Atlantic wahoo was 319. Of these 319 vessels, an average of 53 vessels used longline gear and an average of 266 vessels used other gear to commercially harvest Atlantic wahoo.

However, the proposed action to remove the requirement for a vessel captain or crewmember to possess an operator permit would affect all vessels with valid Atlantic dolphin and wahoo commercial or Atlantic charter vessel/headboat permits regardless of whether they harvest dolphin or wahoo. Further, some vessels possess both permits. The total number of vessels with either a valid Atlantic dolphin and wahoo commercial or Atlantic charter vessel/headboat permit is estimated to be 4,070, of which 2,266 were determined to primarily be commercial fishing vessels while 1,804 vessels were determined to primarily be

for-hire fishing vessels.

Although NMFS possesses complete ownership data for businesses and vessels that participate in other industries, ownership data regarding businesses that possess Atlantic dolphin and wahoo commercial or charter vessel/headboat permits are incomplete. Therefore, it is not currently feasible to accurately determine affiliations between these particular businesses. Because of the incomplete ownership data, for purposes of this analysis, it is assumed each of these vessels is independently owned by a single business, which is expected to result in an overestimate of the actual number of businesses directly regulated by this proposed action. Thus, based on the information above, this proposed rule is estimated to directly regulate 2,266 commercial fishing businesses and 1,804 for-hire fishing businesses in the Atlantic dolphin and wahoo fishery.

From 2015 through 2019, the average annual gross revenue for a vessel commercially harvesting Atlantic dolphin using longline gear was \$268,849 while the average annual gross revenue for a vessel commercially harvesting Atlantic wahoo using longline gear was \$244,552. The best available estimate of economic profit for longline vessels is net revenue as a percentage of gross revenue, which is estimated to be 39.7 percent. This estimate results in an overestimate of actual economic profit as it does not

account for implicit costs (e.g., the cost of an owner operator's time) or fixed costs. Nonetheless, annual economic profit for vessels harvesting Atlantic dolphin using longline gear is estimated to be \$105,472 per vessel, while annual economic profit for vessels harvesting Atlantic wahoo using longline gear is estimated to be \$136,787.

From 2015 through 2019, the average annual gross revenue for a vessel commercially harvesting Atlantic dolphin using other gear was \$52,009 while the average annual gross revenue for a vessel commercially harvesting Atlantic wahoo using other gear was \$46,336. For vessels using other gear, after accounting for all costs, net operating revenue is estimated to be 0.5 percent of gross revenue. Therefore, annual economic profit for vessels harvesting Atlantic dolphin using other gear is estimated to be \$261 per vessel, while annual economic profit for vessels harvesting Atlantic wahoo using other gear is estimated to be \$232.

For Regulatory Flexibility Act purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation

(including its affiliates), and its combined annual receipts (revenue) are not in excess of \$11 million for all of its affiliated operations worldwide. From 2015 through 2019, the maximum annual gross revenue earned by a single commercial fishing vessel (business) in the Atlantic dolphin wahoo fishery was approximately \$1.56 million. Based on the information above, all commercial fishing businesses directly regulated by this proposed rule are determined to be small businesses for the purpose of this analysis.

For other industries, the SBA has established size standards for all major industry sectors in the U.S., including for-hire fishing businesses (NAICS code 487210). A business primarily involved in for-hire fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of \$8 million for all its affiliated operations worldwide. Average annual gross revenue for a charter vessel in the South Atlantic is slightly more than \$125,000, while average annual gross revenue for a headboat in the South Atlantic is more than \$304,000. Thus, on average, annual gross revenue for headboats is more than double the annual gross revenue for charter vessels, reflecting the fact that businesses that own charter vessels are typically smaller than businesses

that own headboats. Average annual gross revenues for charter vessels and headboats in the Northeast region are less than in the South Atlantic. The maximum annual gross revenue for a single headboat in the South Atlantic was about \$.78 million in 2017. Based on this information, all for-hire fishing businesses directly regulated by this proposed rule are determined to be small businesses for the purpose of this analysis.

The proposed actions to increase the total ACLs for dolphin and wahoo are not expected to directly affect for-hire fishing vessels. Harvest for the non-headboat components of the recreational sector, including for charter vessels, will now be based on MRIP-FES data rather than MRIP-CHTS data. Non-headboat landings accounted for 99.9 percent of dolphin and wahoo recreational landings from 2015 through 2019. This change in the estimation method does not change how many dolphin or wahoo are actually being harvested by for-hire vessels. Rather, the FES method generates more accurate estimates of effort (trips) and harvest. Thus, the increase in the recreational component of the new ACLs does not necessarily reflect an actual increase in what the recreational sector, including for-hire fishing vessels, can potentially harvest.

With respect to the proposed actions to increase the recreational sector allocations for dolphin and wahoo, assuming the new total ACLs discussed above, the

recreational ACL for dolphin is expected to increase by 737,123 lb (334,353 kg), round weight, or by 3.3 percent, and the recreational ACL for wahoo is expected to increase by 42,702 lb (19,369 kg), round weight, or 1.5 percent. The underlying analysis assumed that changes in the recreational ACLs due to these proposed actions would only affect catch per angler trip and not the total number of trips harvesting dolphin or wahoo (*i.e.*, catch trips or effort). It is even more likely that target trips for dolphin and wahoo are unlikely to change because of these proposed actions, which is important as target trips are assumed to be the source of profits for for-hire fishing vessels. The recreational fishing seasons for dolphin and wahoo are currently year-round and that is not expected to change because of these actions. Thus, target trips for dolphin or wahoo would not be expected to change because of a change in the fishing season length. Headboats only accounted for 0.1 percent of dolphin and wahoo landings from 2015 through 2019. If that trend continues in the future, their landings would only potentially increase by 7,371 lb (3,343 kg), round weight, of dolphin and 43 lb (20 kg), round weight, of wahoo. It is highly unlikely that headboats would increase their target effort for dolphin or wahoo because of such small increases. Charter vessels accounted for 15.8 percent of dolphin landings and 13.4 percent of wahoo landings from 2015 through 2019. If that

continues in the future, their landings could potentially increase by 116,465 lb (52,828 kg), round weight, for dolphin and 5,722 lb (2,595 kg), round weight, for wahoo. As with headboats, this minor increase in their potential landings for wahoo would not be expected to change their target effort for wahoo. However, the potential increase in dolphin landings by charter vessels is not insignificant and it is possible that the number of trips harvesting and even targeting dolphin could increase. However, the increase in the supply of dolphin available for harvest by charter vessels would only lead to an increase in the number of target trips for dolphin if it is accompanied by an increase in the demand for trips targeting dolphin by charter vessels. As the proposed action by itself is not expected to induce a higher demand for target trips, the assumption that target trips for dolphin by charter vessels would not change seems reasonable. Because the number of for-hire fishing trips targeting dolphin or wahoo is not expected to change, no change in economic profits to for-hire fishing vessels is expected due to these actions. However, if target trips for dolphin by charter vessels were to increase, their profits would be expected to increase as well.

Conversely, the proposed actions to increase the total ACL and decrease the commercial sector's allocation of the total ACL for dolphin are expected to directly affect

vessels commercially harvesting dolphin. The magnitude of these effects are expected to vary depending on whether vessels use longline gear or other gear to commercially harvest dolphin, in part because longline vessels are responsible for harvesting 78 percent of the commercial Atlantic dolphin landings while vessels using other gear only harvest 22 percent. Further, the average ex-vessel price for dolphin landed by longline gear is \$3.17/lb, round weight, while the average ex-vessel price for dolphin landed by other gear is only \$3.05/lb, round weight.

Compared to average annual landings from 2015 through 2019, for longline vessels, the increase in the total ACL for dolphin could result in an increase of 1,309,456 lb (593,959 kg), round weight, in landings of dolphin. This increase in landings would be expected to increase their gross revenue by approximately \$4,150,976, or \$48,835 per vessel. This potential increase in gross revenue would be expected to increase economic profit for longline vessels by approximately \$1,647,937, or \$19,387 per vessel, which represents an 18.4 percent increase in their economic profits. Compared to average annual landings from 2015 through 2019, for vessels using other gear, the increase in the total ACL could result in an increase of 369,480 lb (167,593 kg), round weight, in landings of dolphin. This would be expected to increase their gross revenue by approximately \$1,126,914, or \$1,904 per vessel. This

potential increase in gross revenue would be expected to increase economic profits by approximately \$5,634, or about \$10 per vessel, which represents a 3.6 percent increase in their economic profits.

However, the decrease in the commercial sector's allocation from 10 percent to 7 percent would partially offset some of these potential gains in landings, revenue and economic profits. Specifically, given the increased total ACL, for longline vessels, the decrease in the commercial sector's allocation for dolphin would reduce the potential landings, revenue, and economic profits of dolphin by 574,956 lb (260,795 kg), round weight, \$1,822,611, and \$723,577, respectively. On a per vessel basis, revenue and economic profit would decrease by approximately \$21,442 and \$8,513, respectively. Thus, for longline vessels, the combined effects of the higher total ACL and reduced commercial sector allocation for dolphin would potentially lead to an increase in landings, revenue, and economic profits for dolphin of 734,500 lb (333,163 kg), round weight, \$2,328,365, and \$924,360, respectively. On a per vessel basis, revenue and economic profit would increase by approximately \$27,393 and \$10,875, respectively, or by about 10.3 percent.

For vessels using other gear, increase in the total ACL and the decrease in the commercial sector's allocation for dolphin would reduce the potential landings, revenue,

and economic profits of dolphin by 162,176 lb (73,562 kg), round weight, \$494,610, and \$2,473, respectively. On a per vessel basis, revenue and economic profit would decrease by approximately \$36 and \$4, respectively. Thus, for vessels using other gear, the combined effects of the higher total ACL and reduced commercial sector allocation for dolphin would potentially lead to an increase in landings, revenue, and economic profits for dolphin of 207,313 lb (94,036 kg), round weight, \$632,304, and \$3,161, respectively. On a per vessel basis, revenue and economic profit would increase by approximately \$1,068 and \$5, respectively, or by about 2 percent.

Similarly, the proposed actions to increase the total ACL and decrease the commercial sector's allocation of the total ACL for wahoo are expected to directly affect vessels commercially harvesting wahoo. The magnitude of these effects are expected to vary depending on whether vessels use longline gear or other gear to commercially harvest wahoo, in part because longline vessels are responsible for harvesting 28 percent of the commercial Atlantic wahoo landings while vessels using other gear harvest 72 percent. Further, the average ex-vessel price for wahoo landed by longline gear is \$3.75/lb, round weight, while the ex-vessel price for wahoo landed by other gear is \$4.05/lb, round weight.

Compared to average annual landings for longline

vessels from 2015 through 2019, the increase in the total ACL for wahoo could result in an increase of 13,936 lb (6,321 kg), round weight, in landings of wahoo. This increase in landings would be expected to increase their gross revenue by approximately \$52,260, or \$986 per vessel. This potential increase in gross revenue would be expected to increase economic profits for longline vessels by approximately \$20,747, or \$391 per vessel, which represents a 0.3 percent increase in their economic profits. Compared to average annual landings for vessels using other gear from 2015 through 2019, the increase in the total ACL could result in an increase of 38,837 lb (17,616 kg), round weight, in landings of wahoo. This increase in landings would be expected to increase their gross revenue by approximately \$157,290, or \$591 per vessel. This potential increase in gross revenue would be expected to increase economic profits by approximately \$786, or about \$3 per vessel, which represents a 1.3 percent increase in their economic profits.

However, the decrease in the wahoo commercial sector's allocation from 3.93 percent to 2.45 percent would mostly offset these potential gains in landings, revenue and economic profits. Specifically, for longline vessels, the decrease in the commercial sector's allocation for wahoo would reduce the potential landings, revenue, and economic profits of wahoo by 11,957 lb (5,424 kg), round weight,

\$44,839, and \$17,800, respectively. On a per vessel basis, revenue and economic profit would decrease by approximately \$846 and \$336, respectively. Thus, for longline vessels, the combined effects of the higher ACL and reduced commercial sector allocation for wahoo would potentially lead to an increase in landings, revenue, and economic profits for wahoo of 1,979 lb (898 kg), round weight, \$7,421, and \$2,947, respectively. On a per vessel basis, revenue and economic profit would increase by approximately \$140 and \$55, respectively, or by less than 0.1 percent.

For vessels using other gear, the decrease in the commercial sector's allocation for wahoo would reduce the potential landings, revenue, and economic profits of wahoo by 30,745 lb (13,946 kg), round weight, \$124,519, and \$623, respectively. On a per vessel basis, revenue and economic profit would decrease by approximately \$468 and slightly more than \$2, respectively. Thus, for vessels using other gear, the combined effects of the higher ACL and reduced commercial sector allocation for wahoo would potentially lead to an increase in landings, revenue, and economic profits for wahoo of 8,092 lb (3,670 kg), round weight, \$32,771, and \$163, respectively. On a per vessel basis, revenue and economic profit would increase by approximately \$123 and less than \$2, respectively, or by about 0.2 percent.

The proposed actions to revise the triggers for the

post-season recreational AMs for dolphin and wahoo and to revise the post-season recreational AMs for dolphin and wahoo do not directly regulate any for-hire fishing businesses and are not expected to directly affect for-hire fishing vessels. These actions revise existing administrative procedures that could affect management measures in the future if various criteria are met. Thus, these actions may only cause indirect economic effects in the future and neither the direction nor the magnitude of those effects are foreseeable at this time.

The proposed action to allow a vessel that possesses a valid Atlantic dolphin and wahoo commercial vessel permit, and either possesses a valid Federal commercial permit to fish trap, pot, or buoy gear or is in compliance with the Federal regulations for spiny lobster permits, to retain up to 500 lb (228 kg), gutted weight, of dolphin and 500 lb (228 kg) of wahoo using rod and reel gear with trap, pot, or buoy gear on board is expected to increase economic profits. Under the current regulations, vessels with trap, pot, or buoy gear on board were not allowed to retain dolphin or wahoo, and thus were forced to discard any dolphin or wahoo they may have incidentally harvested. Because these vessels may now retain and sell these fish, their gross revenue from fishing would be expected to increase without any increase in costs, and thus their economic profits would be expected to increase as well.

Because retention has not been previously allowed and discard data are limited, it is not possible to determine how many commercial fishing vessels may benefit, or the magnitude of the potential increase in economic profits that may result, from this proposed action.

The proposed action to remove the requirement for a vessel captain or crewmember to possess an operator permit is expected to reduce costs for 2,266 commercial fishing businesses and 1,804 for-hire fishing businesses. The current requirement results in direct costs to vessels that possess Atlantic dolphin and wahoo commercial or charter vessel/headboat permits. These costs include application fees and associated preparation costs incurred in the permit application process, including the need to obtain two passport photos, postage, and the time to prepare and send the application materials once every 3 years. The total reduction in costs associated with removing this requirement is estimated to be \$369,515, of which \$205,730 would accrue to fishing vessels determined to primarily be commercial fishing businesses and \$163,785 would accrue to vessels determined to primarily be for-hire fishing businesses. The reduction to both types of businesses is approximately \$91 per vessel/business, which represents less than 0.1 percent of a commercial longline vessel's annual economic profit but as much as 39 percent of the annual economic profit for a commercial vessel using other

gear. Profit estimates are not available for these for-hire fishing businesses, but this cost reduction represents less than 0.1 percent of the average annual gross revenue for both charter vessels and headboats in the South Atlantic and headboats in the Northeast Region, and about 0.3 percent of the annual average gross revenue for charter vessels in the Northeast Region.

The proposed action to reduce the recreational vessel limit for dolphin from 60 fish to 54 fish per trip for private recreational and charter vessels does not apply to headboats. Further, private recreational vessels are not businesses or entities under the Regulatory Flexibility Act and therefore are not germane to this analysis. In addition, this proposed action is not expected to directly affect charter vessels for reasons similar to why the proposed actions to change the total ACL is not expected to directly affect charter vessels and the recreational sector allocation for dolphin is not expected to adversely affect charter vessels. Specifically, the recreational fishing season for dolphin is currently year-round and that is not expected to change because of this action. Further, the underlying analysis assumed that a change in the vessel limit would only affect catch per angler on charter vessel trips and not the total number of charter vessel trips. Because the number of for-hire fishing trips is not expected to change, no change in economic profits to for-

hire fishing businesses is expected due to this action.

Based on the information above, although a substantial number of small entities would be affected by this proposed rule, this proposed rule would not have a significant economic impact on those entities. Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a change to a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This proposed rule would revise existing requirements for the collection of information approved under OMB Control Number 0648-0205, Southeast Region Permit Family of Forms. NMFS proposes to remove the requirement for an operator permit in the commercial and for-hire portions of the Atlantic dolphin and wahoo fishery as specified by 50 CFR 622.270(c). For the Federal Permit Application for Southeast Region Issued Operator Card, NMFS estimates this proposed rule would decrease the annual number of respondents to 74 and decrease the annual number of responses to 74. Further, NMFS estimates the annual burden hours would decrease to 37 hours, and the annual burden cost would decrease to \$3,774. Public reporting burden for the Federal Permit Application

for Southeast Region Issued Operator Card is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed change to a collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at www.reginfo.gov/public/do/PRAMain.

Notwithstanding any other provision of the law, no person is required to respond to, nor will any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 622

Accountability measures, Annual catch limits, Atlantic, Commercial, Dolphin, Fisheries, Fishing,

Recreational, Wahoo.

Dated: January 10, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory

Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR part 622 as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.270:

- a. Revise paragraphs (a) (1) and (2);
- b. Revise paragraph (b) (1); and
- c. Remove and reserve paragraph (c).

The revisions read as follows:

§ 622.270 Permits.

(a) * * *

(1) For a person aboard a vessel to be eligible for exemption from the bag and possession limits for dolphin or wahoo in or from the Atlantic EEZ or to sell such dolphin or wahoo, a commercial vessel permit for Atlantic dolphin and wahoo must be issued to the vessel and must be on board, except as provided in paragraph (a) (2) of this

section.

(2) The provisions of paragraph (a)(1) of this section notwithstanding, a fishing vessel, except a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery, is exempt from the bag and possession limits for dolphin and wahoo and may sell dolphin and wahoo, subject to the trip and geographical limits specified in § 622.278(a)(3). (A charter vessel/headboat permit is not a commercial vessel permit.)

(b) * * *

(1) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Atlantic dolphin or wahoo, in or from the Atlantic EEZ, a valid charter vessel/headboat permit for Atlantic dolphin and wahoo must have been issued to the vessel and must be on board.

* * * * *

3. In § 622.272, revise paragraphs (a)(1) and (2) to read as follows:

§ 622.272 Authorized gear.

(a) * * *

(1) *Authorized gear.* Except as allowed in paragraph (a)(2) of this section, the following are the only authorized gear types in the fishery for dolphin and wahoo

in the Atlantic EEZ: Automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types other than authorized gear types may not possess a dolphin or wahoo.

(2) *Trap, pot, and buoy gear authorization.* A vessel in the Atlantic EEZ that possesses both a valid Federal commercial permit for Atlantic dolphin and wahoo and any Federal commercial permit(s) required that allow a vessel to fish using trap, pot, or buoy gear or that is in compliance with the permitting requirements for the spiny lobster fishery of the Gulf of Mexico and South Atlantic as described at § 622.400, is authorized to retain both dolphin and wahoo harvested by rod and reel while in possession of trap, pot, or buoy gear. See § 622.278(a)(2)(ii) for the amount of dolphin that may be retained under the commercial trip limits as described in this paragraph (a)(2). See § 622.278(a)(1)(ii) for the amount of wahoo that may be retained under the commercial trip limits as described in this paragraph (a)(2).

* * * * *

4. In § 622.277, revise paragraph (a)(1)(i) to read as follows:

§ 622.277 Bag and possession limits.

* * * * *

(a) * * *

(1) * * *

(i) In the Atlantic EEZ--10, not to exceed 54 per vessel, whichever is less, except on board a headboat, 10 per paying passenger.

* * * * *

5. In § 622.278, revise paragraph (a) to read as follows:

§ 622.278 Commercial trip limits.

* * * * *

(a) *Trip-limited permits*--(1) *Atlantic wahoo*. (i) When using the fishing gear for wahoo and as authorized under § 622.272(a)(1), the trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) When using the fishing gear for wahoo and as authorized and permitted as described under § 622.272(a)(2), the trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). The trip limit in this paragraph (a)(1)(ii) may not be combined with the trip limit specified in paragraph (a)(1)(i) of this section.

(iii) See § 622.280(b)(1) for the limitations regarding wahoo after the ACL is reached.

(2) *Atlantic dolphin*. (i) Once 75 percent of the ACL specified in § 622.280(a)(1)(i) is reached, the trip limit

is 4,000 lb (1,814 kg), round weight. When the conditions in this paragraph (a)(3)(i) have been met, the Assistant Administrator will implement this trip limit by filing a notification with the Office of the Federal Register. This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) When using the fishing gear for dolphin and as authorized and permitted as described under § 622.272(a)(2), the trip limit for dolphin in or from the Atlantic EEZ is 500 lb (227 kg), gutted weight. The trip limit in this paragraph (a)(2)(ii) may not be combined with the trip limit specified in paragraph (a)(2)(i) of this section.

(iii) See § 622.280(a)(1) for the limitations regarding dolphin after the ACL is reached.

(3) *Vessels without a Federal dolphin and wahoo commercial permit.* The trip limit for a vessel that does not have a Federal commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery is 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N. lat. (A charter vessel/headboat permit is not a commercial vessel permit.)

* * * * *

6. In § 622.280:

- a. Revise the first sentence of paragraph (a) (1) (i);
- b. Revise paragraph (a) (2);
- c. Add paragraph (a) (3);
- d. Revise the first sentence of paragraph (b) (1) (i);
and
- e. Revise paragraph (b) (2).

The revisions and additions read as follows:

§ 622.280 Annual catch limits (ACLs) and accountability measures (AMs) .

(a) * * *

(1) * * *

(i) If commercial landings for Atlantic dolphin, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,719,953 lb (780,158 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

* * * * *

(2) *Recreational sector.* If the total ACL specified in paragraph (a) (3) of this section is exceeded in a fishing year, then during the following fishing year, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season by the amount necessary to ensure that the recreational ACL is not exceeded during the fishing year following the total

ACL overage. However, the recreational fishing season will not be reduced in the following fishing year if NMFS determines, based on the best scientific information available, that the reduction in the recreational fishing season is unnecessary. The recreational ACL is 22,850,811 lb (10,364,954 kg), round weight.

(3) *Total ACL.* The total ACL, commercial and recreation ACLs combined, for Atlantic dolphin, is 24,570,764 lb (11,145,111 kg), round weight.

(b) * * *

(1) * * *

(i) If commercial landings for Atlantic wahoo, as estimated by the SRD, reach or are projected to reach the commercial ACL of 70,690 lb (32,064 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

* * * * *

(2) *Recreational sector.* As described in the FMP, if average annual recreational landings, when determined using 3-year geometric mean, exceed the recreational ACL of 2,814,613 lb (1,276,687 kg), round weight, then in the following fishing year, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season by the amount necessary to ensure that the recreational ACL is not

exceeded during the fishing year following the recreational ACL overage determination. However, the length of the recreational fishing season will not be reduced in the following fishing year if NMFS determines, based on the best scientific information available, that the reduction in the recreational fishing season is unnecessary.

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